Assocation of State and Territorial
ASTSWMO
Solid Waste Management Officials

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May 2, 2003

The Honorable John D. Dingell
Ranking Minority Member
The House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Dingell:

The purpose of this correspondence is to share the views of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) regarding the amendments to fundamental definitions in both the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) currently proposed by the Department of Defense (DoD) in its requested provisions for the Readiness and Range Preservation Initiative (RRPI) for inclusion in the FY 2004 Defense Authorization Act.

ASTSWMO's members are the State managers of hazardous waste, solid waste, and cleanup programs, who are engaged full time in the regulatory and remediation activities of their State environmental agencies, and have hands-on familiarity with the implementation of federal and State statutes governing those activities. The Association believes these member views are relevant and useful to Congressional decision-makers currently evaluating the DoD proposed statutory amendments. We offer these views in the hope that they will assist in the constructive debate now taking place in the Congress. We fully support the efforts of the Congress and the Administration to continue to improve the superb readiness of our Armed Forces, and our efforts have focused on a constructive approach to finding ways to make the application of hazardous waste laws to military ranges used for live-fire training of our forces reflect a balance of military and civil needs. We are grateful for the opportunity to share our views with you as you craft this legislation.

Our members have been following the debate over DoD range encroachment issues for some time, and have analyzed the range of impacts the RCRA, CERCLA and definitional proposals would have on their ability to effectively operate their delegated State programs. To summarize the results of that review, we have observed:

> The proposal to amend the definition of "solid waste" in Section 2019 of DoD's RRPI would remove or restrict State authority to take action under their RCRA authorized hazardous waste programs in all but a number of enumerated conditions on "operational

ranges". Instead, authority to intervene on an "operational range" would become the sole authority of EPA under a single CERCLA authority. This would restrict States from meeting the timely human health or environmental needs of their citizens in cases not permitted by this new legislative language. This is contradictory to a basic premise of RCRA that States will be authorized to implement hazardous waste laws in lieu of the federal government, and severely reduce the number of regulatory agencies able to monitor and act on specified range activities. This is not in the public interest.

DoD has indicated that this proposed language only codifies the RCRA Military Munitions Rule (40 CFR 266.200) which has been in effect since 1997. While there are substantial similarities in language, that Munitions Rule allows the exercise of State RCRA enforcement authority, giving balance to the modified procedures allowed DoD by the rule. Once State authority to enforce compliance is rescinded, a fundamental weakness is created.

Similarly, the proposed geographic scope in which these RCRA exceptions would apply gives reason for concern, as it would include both active and inactive ranges that could encompass vast areas of land and sea (see enclosed extract of DoD's proposed Section 1043 to the 2004 Defense Authorization Bill). DoD notes that much of this proposed definition is drawn from the Munitions Rule language, but again that RCRA rule is enforceable by States, while these potentially vast "operational ranges" would be excluded from State enforcement as specified in Section 2019.

We commend DoD's dedication to its mission and its desire to clear away barriers that stand in the way of achieving that mission. Our armed forces must be given the opportunity to continue the extraordinary level of combat training readiness they have just demonstrated by actual combat operations, and we want to assist in gaining them appropriate relief from actual legal and/or regulatory barriers. Unfortunately, in the case of the RCRA statute, that need has not been well defined by DoD, not even by examples of the use of existing exception authorities. DoD's stated RCRA needs appear to be based upon possible contingencies, yet the remedies it proposes will have real detrimental effects on the effectiveness of State hazardous waste programs.

Unfortunately, the legislative solution DoD proposes is far too broad and inclusive. We do not think it is in the public interest to reduce State authorities to achieve protection of human health and the environment, nor is it necessary under the circumstances DoD has described as the basis for its proposed legislation. Our experience has been that State hazardous waste program managers have worked closely with DoD component commands to find ways to avoid impeding training activities because of RCRA procedures. We think the absence of actual examples of regulatory barriers is evidence of the success of those cooperative efforts.

Consequently, we are unable to support the proposed DoD legislation as it now stands. We are willing to work with other State organizations, and individual State managers and directors, in conjunction with DoD in an effort to identify actual, existing RCRA barriers and to fashion some

form of necessary relief for situations that restrict military force live-fire training on combat ranges. Until the concerns we have listed above, as well as those raised by other State executive and legal organizations, have been addressed and resolved, we strongly recommend that the Committee not include the proposed Section 2019 of DoD's proposed legislative amendments to RCRA and CERCLA in the 2004 DoD Authorization Bill (H.R. 1588), nor in any other legislative vehicle. If Section 2019 is not included, we see little use in adoption of the proposed Section 1043 definition of an operational range (currently included as Section 1041 of H.R. 1588) until its purpose could be clarified.

Thank you for your consideration of our views as you address this important aspect of national defense. As we indicated, we are prepared to work with DoD in seeking appropriate solutions to existing problems, and would welcome the opportunity to do so.

Sincerely,

Jay Ringenberg

Jay Ringenberg JR
ASTSWMO Vice-President

Enclosure to ASTSWMO letter of May 2, 2003

Extract of the proposed Section 1043 of DoD's proposed legislative language for the 2004 Defense Authorization Act, which would establish the following statutory definition of an operational range:

> `(2) The term `operational range' means--
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> > `(A) a range that is used for range activities, or
> >
> > `(B) a range that is not currently being used for range activities, but that is still considered by the Secretary concerned to be a range, is under the jurisdiction, custody, or control of the Secretary concerned, and has not been put to a new use that is incompatible with range activities.
>
> `(3) The term `range' means a designated land or water area set aside, managed, and used to conduct research, development, testing, and evaluation of military munitions, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, electronic scoring sites, buffer zones with restricted access and exclusionary areas, and airspace areas designated for military use according to regulations and procedures established by the Federal Aviation Administration such as special use airspace areas, military training routes, or other associated airspace.